IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.Rev.Pet.No. 451 of 1998()

CRMP.1500/1998 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD dt.8.5.98.
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REVN. PETITIONER: PETITIONER/ COMPLAINANT

V.S.VIJAYA RAGHAVAN,
FORMER MEMBER OF PARLIAMENT
PRESIDENT, PALAKKAD DISTRICT CONGRES
(I) COMMITTEE, PALAKKAD,
VADAKKUPURAM HOUSE, ERIMAYUR

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS: RESPONDENTS/ ACCUSED
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1. **SHRI.S.G.K.KISHORE,**
FORMER DISTRICT ELECTION OFFICER,
RESIDING IN COLLECTOR'S BUNGALOW
COLLEGE ROAD, PALAKKAD.

2. **STATE OF KERALA, REP.BY**
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY DIRECTOR GENERAL OF PROSECUTION SRI.P.G.THAMPI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON 26/06/2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.451 OF 1998

DATED THIS THE 26th JUNE 2007

ORDER

The revision petitioner is the complainant, who is the President of the Palakkad District Congress Committee of the Indian national Congress(I). He has challenged the order of the court below dismissing the complaint under Section 203 Cr.P.C. The revision petitioner/complainant had alleged offences under Sections 129 and 134 of the Representation of People Act, 1951 against the District Election Officer, Palakkad. He was a candidate in The Palakkad Lok Sabha Constituency in the 12th Lok Sabha Election held on 28-2-1998. The main opponent of the complainant was Sri N.N.Krishnadas, sponsored by the Communist Party of India (M). He was supported by the Left Democratic Front. At that time the LDF coalition headed by the CPI(M) was ruling the State. It was alleged that there was large scale mis-use of official machinery in favour of the candidate opposed to him. The allegation is that the accused, who was the

District Election Officer, in order to further the prospects of his opponent, ordered to raid the premises of M/s. Sincere Printers, English Church Road, Palakkad on 21st and 22nd of February 1998 wherein the petitioner was printing posters. The raid was conducted on the plea that the necessary affidavit has not been filed by the printers. The raid was conducted only to prevent the complainant from getting his posters printed. On 27-2-1998, a day previous to the polling date the accused issued notice to the complainant purported to be under Sections 126 and 127(a) of the Representation of the People Act, 1951 without even conducting a preliminary enquiry. Further the accused hurriedly informed the press reporters about the notice issued to the complainant. It was also informed that the accused is going to take action against the complainant for the alleged electoral offences. The above information was broadcast by the All India Radio on the very same day. The same was also telecast in the Asianet. Immediately thereafter the opposite party started publishing of posters and leaflets that the petitioner has been

disqualified and casting vote to him will be a waste. The accused initiated such propaganda even without getting explanation of the complainant. The above action constituted offence under Sections 129 and 133 of the Representation of People Act, 1951. The complainant had not printed or published anything which do not bear the name of the press or printers. The effect of the action of the accused effected adversely to the prospects of the petitioner in the election. The court below dismissed the complaint as sanction under Section 197 of the Code was not obtained. It is the contention of the revision petitioner that no such sanction is required as the official is appointed by the Election Commission and not by the Union Government or the State Government as the case may be.

2. I find that the court below relied on the definition of the public servant in Section 21 of the I.P.C. to explain the term used in Section 197. As per Eleventh clause of Section 21 of the Indian Penal Code, every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise

an electoral roll or to conduct an election or part of an election is a public servant. The court also noted that vide Section 13 AA of the Representation of People Act, 1951 it is provided that for each District in a State, the Election Commission shall in consultation with the Government of the State, designate or nominate a District Election officer who shall be an officer of Government. Hence, it was pointed out that the accused herein has to be definitely treated as a public servant and as per Section 197 and hence to prosecute such an officer for an offence allegedly committed in the discharge of his official duty, sanction of the concerned Government is required. The accused was working as the District Collector of Palakkad at the time. The court below has also noted that Section 13 CC of the Representation of People Act, 1951 provides that the District Collectors shall be deemed to be on deputation to the Election Commission. Counsel for the revision petitioner could not bring to my notice any position to the contra. It was thus the court below held that the accused is entitled to the protection under

Section 197 Cr.P.C.

I find that the order of the court below is a well considered one and does not call for interference. The Crl.revision petition is dismissed.

Sd/-

K.R.UDAYABHANU, JUDGE

ks. **TRUE COPY**

P.S.TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.NO.451 of 1998-A

ORDER

26-6--2007